S. HRG. 99-864

NOMINATION

HEARING

BEFORE THE

COMMITTEE ON LABOR AND HUMAN RESOURCES UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

JOHN A. PENDERGRASS, OF MINNESOTA, TO BE AN ASSISTANT SECRETARY OF LABOR (FOR OCCUPATIONAL SAFETY AND HEALTH), DEPARTMENT OF LABOR

MAY 9, 1986

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NOMINATION

FRIDAY, MAY 9, 1986

U.S. SENATE,
COMMITTEE ON LABOR AND HUMAN RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 9:06 a.m., in room SD-430, Dirksen Senate Office Building, Senator Orrin G. Hatch (chairman) presiding.

Present: Senators Hatch, Nickles, Kennedy, and Simon.

Also present: Senator Durenberger.

Senator NICKLES [presiding]. We will begin.

I think Senator Durenberger and possibly Senator Boschwitz will be joining us in a moment. We will interrupt your statement at that time.

I know that you have a heavy agenda today, as everyone does. We welcome you before this committee. It is my hope that we will be successful in concluding your statement and the questions by members of the committee early today. I am hopeful that we will be successful in reporting your nomination to the committee next week and to the Senate as well on as expedited a basis as possible. I think it is necessary to get you in the position as soon as possible. You have enormous responsibilities before you. I think Secretary Brock needs your help.

Senator Kennedy, we welcome you this morning as well. Do you have any opening comments?

Senator KENNEDY. Yes, please. Thank you very much, Mr. Chairman.

I want to welcome Mr. Pendergrass to the hearings on his nomination to a position of such importance to the very lives of millions of working men and women. The Assistant Secretary of Labor for Occupational Safety and Health can play an enormous role in the promulgation and enforcing standards of safety, and that role can be either to the benefit of workers or to their detriment.

Mr. Pendergrass, I view the stewardship of the next OSHA Director with both great hope and fear. I hope the Agency entrusted with aggressively protecting the safety and health of our Nation's workers will begin to do just that, and I hope that the experts at the Agency will set what standards are in the best interest of workers and listen to the concerns of workers and their representatives and not cater to the whim of industry or the officious meddling of other agencies.

And I hope enforcement of the law and the standards once again become important goals of the Agency and not paper mandates, violated at will, with little chance of protection and almost no

threat of serious punishment. And I hope that even and firm enforcement will make the playing field level again. Responsible businesses who protect their workers' health should not suffer any disadvantage because their competitors cut corners on safety and health.

I fear the agency will continue the poor record of promulgation and enforcement which has been established during the 6 years of this administration. Inspections alone have dropped precipitously, and comparing fiscal year 1980 with fiscal year 1983, complaint inspections are down 60 percent; followup inspections are down 86 percent; the number of serious violations found is down 41 percent; the number of willful violations found is down 88 percent; the penalties for failure to correct are down 81 percent; total penalties are down 74 percent—and the list goes on.

It is a blueprint of how to effectively repeal a statute without changing the law.

I fear the Office of Management and Budget will continue to dictate policy and substance to OSHA, both informally, before a standard is even drafted, and formally, after it is drafted.

There is a widespread perception in the safety and health community that OMB dictates every word and phrase to OSHA, and that perception has hurt both the effectiveness and the reputation of OSHA.

Mr. Pendergrass, it is with these hopes and fears that I enter this hearing, and I look forward to your answers to the questions relating to these concerns.

Thank you, Mr. Chairman.

Senator NICKLES. Senator Durenberger, welcome to this committee.

STATEMENT OF HON. DAVE DURENBERGER, A U.S. SENATOR FROM THE STATE OF MINNESOTA

Senator DURENBERGER. Thank you, Mr. Chairman, Senator Kennedy.

I regret being here late and admire you for your timeliness. It is a pleasure for me to in a sense, I suppose, introduce John Pendergrass to you, although you have been introduced to him in a variety of ways before this, as the President's nominee for Assistant Secretary of Labor for Occupational Safety and Health.

I met John in 1978, during the course of my first campaign for office. I met occupational safety and health many years before that, because Minnesota is probably the first State in the country to establish a State-level commitment to occupational safety and health. And it is for that reason that, on behalf of the people of the State of Minnesota, with their sensitivity to safety and health, that I recommend to you a Minnesotan. Minnesotans are born conscientious—in this case, also experienced—in an area that will serve this Nation very, very well.

As you know, John is joined today by his wife, Dolly, and his son, John.

You have a brief review of John's life, and I think it tells you that he has made a career of studying, planning for and maintaining safe workplaces wherever he has been. His extensive experi-

ence in the field over two decades with the 3M Company of St. Paul has given him a practical grounding in the issues involved in workplace safety and health, which he will have to address as the Administrator of OSHA.

He brings to the Department, he brings to the administration, and he brings to all of us both experience and a commitment to using the power and the authority of the Federal Government where necessary and appropriate to ensure the welfare of all Americans on the job.

So I thank you, Mr. Chairman, for giving me the opportunity to appear with John today, and I thank the President for giving us all an opportunity to share in John's background and in his experience.

I would encourage you to proceed as expeditiously as possible to report this nomination to the full Senate.

Senator NICKLES. Senator Durenberger, thank you very much for joining us this morning. We appreciate your cooperation with the committee, and I echo that concern. We are going to try and move as quickly as we possibly can with this nomination.

Thank you very much.

Senator DURENBERGER. Thank you very much.

Senator NICKLES. Mr. Pendergrass, do you have an opening statement?

Mr. PENDERGRASS. Yes, Senator.

Senator NICKLES. Please proceed.

STATEMENT OF JOHN A. PENDERGRASS, OF ST. PAUL, MN, NOMINATED TO BE ASSISTANT SECRETARY OF LABOR FOR THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Mr. PENDERGRASS. Mr. Chairman, members of the committee, it is an honor to appear before this committee today, and I am privileged to have been nominated by President Reagan to serve as his seventh Assistant Secretary of Labor for the Occupational Safety and Health Administration.

In addition, I consider it a privilege to work with Secretary Bill Brock. I respect Bill Brock, and I share his commitment to protect the safety and health of the American worker.

Most of my professional life has been spent in the pursuit of health and safety in the workplace. If recommended by this committee and confirmed by the Senate, I will continue my dedication to health and safety and to serve the President, Secretary Brock, and most importantly, the working men and women of our country.

In the past month, I have met with many members of the committee. I have come to know the concerns that you have for job safety and health. I look forward to continuing that dialog and working closely with you to assure safe and healthful conditions of employment for Americans.

Secretary Brock has pledged to you a new emphasis in occupational health. I share his commitment. My experience in workplace health and safety is as a practitioner, as a manager, as an administrator, an educator, and most recently, as a businessman.

During these years, I have visited thousands of workplaces. I have evaluated at least that many for hazardous conditions. I have

talked with thousands of workers, hundreds of foremen, supervisors, managers, and executives. And I have learned a great deal from them.

Thus, the basis of my experience is not simply my own years, but is more the collective experience of the many people that I have been fortunate to work with.

My technical training is in analytical chemistry, toxicology, health physics, and industrial hygiene. I believe this technical training, coupled with my experience in safety and health, will serve me well as I face the challenges of this important Agency.

During the 15 years of OSHA's existence, I have watched OSHA closely, as have most other people. The agency has been eulogized, it has been vilified, often at the same time, but never forgotten.

Where there is deep concern, passions run strong, and my passion, my concern, runs just as strongly where the safety and health of American workers is at stake.

There has been contention among OSHA's constituencies in the past, and there will continue to be. Today, there are two issues that are in the public eye: health standards and enforcement.

There is argument that OSHA health standards are obsolete or inadequate, and perhaps even lacking. Across the country, you and I both have heard that enforcement is either too strict, not strict enough, or that there has even been harassment.

We hear these conflicting views at the same time.

Before we discuss the serious challenges ahead, let me emphasize the progress that has been made during the past 15 years.

American workers today are better informed about occupational health than ever before. They are more insistent upon safe and healthful working conditions. The unions have intensified interest in health and safety. They have larger staffs of safety and health professionals and are more influential than in the past.

Employers, too, are vitally concerned about creating safe and healthy conditions in the workplace. Industry safety and health professionals have increased significantly during the OSHA years.

At the State level, those federally approved OSHA programs have a dedicated core of highly qualified professionals in the field, in the laboratories, and in administration.

OSHA is making a difference, and I am looking forward to leading the Agency into the future and insuring that it is a catalyst for positive change in the workplace.

As Assistant Secretary, I will need your advice and counsel as I manage the Agency's affairs. I am committed to making the programs administered both in the field and in the national office more effective. To that end, my door will be open to labor and to business. I will need their ideas, and they will need to hear mine. I will focus attention on both of the major issues—standards and enforcement.

Health standards are a major concern. In fact, most of the OSHA regulations of chemicals are based on interpretation of information available prior to 1970. Much has been learned since then, and we need to be able to use current information to keep regulations up to date.

The significant amount of resources required to promulgate new standards is another problem that must be addressed, and this

leads us to another aspect of chemical regulation—the large number of chemicals in commercial use in the United States.

Under the present system, it has taken from 18 months to 10 years to develop and promulgate each health standard. At the same time, the cost of developing a single standard can range from $4 to $8 million. There must be a better way.

In fact, OSHA is making some progress in this area with the issuance of the Hazard Communication Standard—a generic standard and a new direction in rulemaking. This standard enables both workers and employers to know about the hazards, not of just one chemical, but of all the chemicals that are used in that worksite. This standard is a major step toward protecting workers who work with dangerous chemicals.

But hazard communication is only one avenue we must pursue if we are to find solutions to this important problem. I know Secretary Brock is determined to find that solution, and I can assure you it will be one of my priorities as Assistant Secretary. I intend to talk regularly with the brightest thinkers in labor and management, as well as bring together the academics and safety and health experts to help us develop new and creative ways to improve the standard-setting process.

Enforcement is also a major concern. The corollary to enforcement is compliance, and a safe and healthful workplace is our goal. The OSHA inspection plays a productive role in helping to achieve that goal.

First, it serves as an incentive to employers to provide a safe worksite for their employees. Second, it is a mechanism to guarantee that unsafe situations are corrected and that employees are protected. But equally important, inspections serve as educational tools in helping employers understand that job safety is good business. The educational role not only solves an employer's immediate problems, but also can help to make sure that those problems and others do not happen in the future.

It is the policy of Secretary Brock and this administration to achieve workplace safety through a balanced approach with employers—the vast majority of whom are concerned about safety and health. It is a problem-solving approach that concentrates on battling hazards—not employers or employees.

We know that most Americans are honorable and law abiding. We must convince the few who are not that a safe worksite is ultimately less costly and a more productive one.

I will emphasize, however, that those employers who do endanger the lives of their employees should expect the full enforcement of the law.

Let me conclude by saying that, during this administration, our country has experienced tremendous economic growth. Hundreds of new businesses have been created. More men and women have jobs. And you can feel a sense of renewed productivity in the States. America is on the move again.

The mission of the Occupational Safety and Health Administration goes to the very heart of what is important to the American worker—health and safety on the job. If the factor worker or businessman is worried that his safety and health may be endangered

at his place of employment, the entire Nation suffers; productivity declines; economic growth slows down.

So as U.S. industry continues to progress, as technology catapults us into the 21st century, I am excited at the prospect of doing what I can to insure that every American has confidence that, despite rapid economic change, when he walks into work, his safety and health is not something he will have to worry about. Secretary Brock and I are committed to this end.

I look forward to working with the committee. I will be happy to answer any questions you have.

[The biographical sketch of Mr. Pendergrass follows:]

STATEMENT FOR COMPLETION BY PRESIDENTIAL NOMINEES

PART I: ALL THE INFORMATION IN THIS PART WILL BE MADE PUBLIC

Name: PENDERGRASS (LAST) JOHN (FIRST) AMBROSE (OTHER)

Position to which nominated: Assistant Secretary of Labor, OSHA Date of nomination: February 28, 1986

Date of birth: 31 (DAY) Aug. (MONTH) 1925 (YEAR) Place of birth: Valley Head, Alabama

Marital status: Married Full name of spouse: Dolly Ruth Pendergrass

Name and ages of children: John Ambrose Pendergrass III 31

Judith Ann Pendergrass [illegible]

Nancy Jean Pendergrass [illegible]

Education:

Institution	Dates attended	Degrees received	Dates of degrees
Tulane University	7-43 / 10-44	---	---
University of Alabama	9-46 / 6-48	B.S.	6/48
University of Michigan	9-54 / 9-55	MPH(IE)	12/55

Honors and awards: List below all scholarships, fellowships, honorary degrees, military medals, honorary society memberships, and any other special recognitions for outstanding service or achievement.

Delta Omega - Honorary Public Health Society

Memberships: List below all memberships and offices held in professional, fraternal, business, scholarly, civic, charitable and other organizations for the last five years and any other prior memberships or offices you consider relevant.

Organization	Office held (if any)	Dates
American Industrial Hygiene Assoc.	Director	1967 - 1970
American Industrial Hygiene Assoc.	V.Pres., Pres-Elect., President	1972 - 1975
Board Certified Safety Professional	Director	1974 - 1977
American Board Industrial Hygiene	Director	1980 - to date
American Academy Industrial Hygiene	Director	1985 - to date
American Industrial Hygiene Fdn.	Director	1985 - to date
ABIH/BCSP Joint Committee on Technology	Chairman	1982 - to date

Employment record: List below all positions held since college, including the title or description of job, name of employer, location of work, and dates of inclusive employment.

Life of Georgia, Insurance Agent, Florence, Alabama, July 1948

Tennessee Valley Authority, Muscle Shoals, Alabara, July 1948 - Mar. 1951
Biological Aide and Biologist - Toxicology Studies

U.S. Navy, Mar. 1951 - Mar. 1953, Recall to Active Duty
in USS Kenneth D. Bailey DD713, Gunnery Officer

TVA, Industrial Hygiene Chemist, Mar. 1953 - Sept. 1954

Univ. of Mich., Graduate Student, Industrial Hygiene Masters Program,
Sept. 1954 - Sept. 1955

TVA, Industrial Hygienist, Sept. 1955 - Sept. 1956

Boeing Airplane Co., Wichita, Kansas, Sept. 1956 - Nov. 1957
Industrial Hygienist and Supervisor Clinical Laboratory

American Cyanamid Co., Staff Industrial Hygienist, New York City
and Wayne, N.J., Nov. 1957 - April 1964

3M Company, April 1964 - Oct. 1979, Industrial Hygienist to Associate Director, Medical Department for Industrial Hygiene, Health Physics and Toxicology; Oct. 1979 - 3M Occupational Health & Safety Products Division, New Business Development, Manager Hazards Awareness Products

Government experience:

List any advisory, consultative, honorary or other part-time service or positions with Federal, State, or local governments other than those listed above.

Minnesota Governor's Committee for Occupational Safety and Health,
1971 - 1972

Conference on Occupational Health Programs, October 1982 - OSHA

Published writings:

List the titles, publishers and dates of books, articles, reports or other published materials you have written.

"VDTS-How Real the Hazard", National Safety & Health News, 1985

"Process Hazards to Health", Chemtech, October 1973

"An Air Monitoring Program in a Chlorine Plant", American Industrial Hygiene Association Journal, September-October 1964

"Screening of Occupational Environment - A Critique of Exposure Limits", American Journal of Public Health, July 1967

"Planning Industrial Hygiene Studies to Utilize Plant Personnel", AIHA Journal, July-August 1964

(Continued on back of page)

Political affiliations and activities:

List all memberships and offices held in or financial contributions and services rendered to all political parties or election committees during the last five years.

Vice Chairman, Minnesota District 53B

53B Delegate to Ind-Republican State Convention

Chairman, 53B Candidate Search Committee

53B Delegate to Minn. 4th District Convention

Continued from page 3, "Published Writings" Section:

"Graphite", ILO Encyclopedia on Occupational Health and Safety, 1972
"Industrial Hygienist Must Take the Offensive", International Journal Occupational Health and Safety, November-December 1975
"Interaction & Communication With Management", American Industrial Hygiene Association Journal, May 1983
"Correlation of Air Concentrations and Biological Data - Sampling and Analysis of Toxic Organics in the Atmosphere - STP 721", American Society for Testing and Materials, 1980
"American Industrial Hygiene Association - Safety in Review - Coordinating With Other Organizations", 1975 Administrative Engineers Conference, American Insurance Association

Future employment relationships:

1. Indicate whether you will sever all connections with your present employer, business firm, association or organization if you are confirmed by the Senate.

Yes, but will continue elegibility under retirement plan

2. State whether you have any plans after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization.

No

3. Has a commitment been made to you for employment after you leave Federal service?

No

4. Do you intend to serve the full term for which you have been appointed or until the next Presidential election, whichever is applicable?

Yes

Potential conflicts of interest:

1. Describe any financial arrangements, deferred compensation agreements or other continuing financial, business or professional dealings with business associates, clients or customers who will be affected by policies which you will influence in the position to which you have been nominated.

None, except continued participation in 3M Pension Plan

2. List any investments, obligations, liabilities, or other financial relationships which constitute potential conflicts of interest with the position to which you have been nominated.

Cray Research, Super Computer Manufacturer - Wife owns small amount of stock

3. Describe any business relationship, dealing or financial transaction which you have had during the last five years whether for yourself, on behalf of a client, or acting as an agent, that constitutes a potential conflict of interest with the position to which you have been nominated.

None

4. List any lobbying activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any Federal legislation or of affecting the administration and execution of Federal law or policy.

None

5. Explain how you will resolve any potential conflict of interest that may be disclosed by your responses to the above items.

I will recuse myself from involvement in any matter that would constitute a conflict of interest or divest the conflict in question.

Senator NICKLES. Mr. Pendergrass, thank you very much for your statement and comments and commitment toward working for worker health and safety.

How long have you been working in the health and safety field?

Mr. PENDERGRASS. Thirty-eight years.

Senator NICKLES. Thirty-eight years. How much of that was with 3M?

Mr. PENDERGRASS. Twenty-two.

Senator NICKLES. Could you give us a description of what you did with 3M Co.?

Mr. PENDERGRASS. I went to 3M in 1964 to become a part of the medical department and with the responsibility of setting up the industrial hygiene program for the corporation.

At that point, I was the industrial hygiene program.

We very quickly added a health physicist to the staff, and then gradually expanded to include toxicology, as well as industrial hygiene and health physics.

We had a staff responsibility, an advisory responsibility, to the corporation. This is the 100-plus plants in the United States with about 60 or so outside in foreign countries.

The responsibility was to advise management as to what the conditions were in the plants, and to work with them in controlling them.

Senator NICKLES. Did you have a good working relationship with both labor and management?

Mr. PENDERGRASS. I think I did; yes, Senator.

Senator NICKLES. You mentioned working with exposure levels of various chemicals.

Mr. PENDERGRASS. Yes, this is basically what it was. We—I, first, and then the staff, later—would visit the work locations, determine what was there, what the exposures might be, whether or not they were hazardous to the worker, and then recommend changes that would be necessary to bring those into acceptable levels.

This might frequently—I might even say most frequently—involve some changes in process, whether this was the application of ventilating systems, change of process for that control.

Senator NICKLES. Are you familiar with the confusion over jurisdiction between OSHA and the Alcohol, Tobacco and Firearms under Treasury over the fireworks plants, and the explosion that we had in Oklahoma, particularly?

Mr. PENDERGRASS. Well, I am familiar with it from the newspaper accounts, and to some degree with discussions with the people at OSHA; and that there was a jurisdictional dispute.

However, I think you are aware, Senator, that there has been a special emphasis program put into place to inspect fireworks manufacturing sites as a result of that explosion.

Senator NICKLES. Would that be inspection under OSHA or under Treasury?

Mr. PENDERGRASS. That is under OSHA.

Senator NICKLES. That would be under OSHA?

Mr. PENDERGRASS. Yes.

Senator NICKLES. Would dual jurisdiction over that continue?

Mr. PENDERGRASS. I think that will have to be resolved, but right at the present time, OSHA has taken the responsibility of inspecting the fireworks places.

Senator NICKLES. We had an explosion in Hallett, OK, at a fireworks plant that killed 21 people. The plant had not been inspected by OSHA or the Bureau of Alcohol, Tobacco and Firearms. After the explosion, there was some kicking back and forth and OSHA said, "Wait a minute, I thought they were doing it," and BATF said, "Well, I thought they were doing it," and it was not done. And then, unfortunately, 21 people lost their lives.

Mr. PENDERGRASS. Yes, Senator.

Senator NICKLES. We do not want to see that occur again.

Senator Kennedy, do you have questions?

Senator KENNEDY. Yes.

Were you the director of the program at 3M?

Mr. PENDERGRASS. Yes, sir.

Senator KENNEDY. And how long were you director?

Mr. PENDERGRASS. Well, since I started it, it was about 15 years. In 1979, I went with the Occupational Health and Safety Products Division to develop a program of creating audiovisuals for training workers in the health hazards. This was a profit center. We made the programs, and they are available to the public.

Senator KENNEDY. So as far as 3M is concerned, you were the—what was actually your title there?

Mr. PENDERGRASS. Well, I had several titles, but it wound up as Associate Director of the Medical Department for Industrial Hygiene, Health Physics and Toxicology.

Senator KENNEDY. But you were the person that was responsible within the 3M organization for health and safety in the workplace for 3M?

Mr. PENDERGRASS. For health, yes, sir.

Senator KENNEDY. For health.

And what was your role in 3M again for health in terms of the products that they produced?

Mr. PENDERGRASS. The only products—well, I and my staff were always available to any division for assistance our expertise might provide them. We were not a part of any of those research groups.

As I mentioned, in 1979, I went with the Occupational Health and Safety Products Division for the purpose of developing training materials. In that role, I of course was aware of other projects that were going on, but did not have a direct role in their development.

Senator KENNEDY. And so in your capacity, you were not involved with any of the activities of 3M that might have been related to the Federal Government in terms of development of products, or safety or health implications of any of the products at 3M—in an official way, other than just advisory or when you were called upon.

Mr. PENDERGRASS. I have had many contacts with the people in OSHA over the years. At one point, I was here with the training materials and having them looked at by the people at OSHA as to whether these were good materials.

At one point, they did review some of our——

Senator KENNEDY. These training materials were related to safety in the workplace, is that right?

Mr. PENDERGRASS. Yes, sir.

Senator KENNEDY. But they were not with regards to the products being produced by 3M, in terms of health?

Mr. PENDERGRASS. There is one letter that I wrote to a member of OSHA with regard to respirators and a proposed cotton dust standard. That is the only direct contact that I have had with an agency regarding a 3M product.

Senator KENNEDY. All right. Let me get into some of the particular issues.

Do you think that workers in a plant have a right to know what toxic substances they are exposed to, and what the employer is doing to monitor and control these substances?

Mr. PENDERGRASS. Senator, that is, I think, a very important aspect of providing a safe and healthful workplace. I have spent many, many hours——

Senator KENNEDY. Well, let me just get—do I understand, then, the answer is "Yes"?

Mr. PENDERGRASS. Yes.

Senator KENNEDY. OK. Thank you.

And I understand that in 1978, the Oil, Chemical, and Atomic Workers Union sought to obtain that information from 3M Company on behalf of its members who worked at 3M plants; is that right?

Mr. PENDERGRASS. In 1978, the letter was received at one of the plants from the president of the local union, requesting a list of all the chemicals that we used in the plant and what health and safety information there was available—along with some other information.

Senator KENNEDY. Now, I understand that 3M refused to give the union that information, and the union filed charges with the NLRB; is that right?

Mr. PENDERGRASS. That is right.

Senator KENNEDY. And the NLRB held a hearing and ruled in favor of the union, and then 3M then appealed to the national NLRB, which also upheld the union's right to know. 3M then appealed to the Court of Appeals, which also upheld the union's right to know; is that right?

Mr. PENDERGRASS. That is right.

Senator KENNEDY. Did you participate in any way in the 3M negotiations with the union and its refusal to give the union the information that it was seeking?

Mr. PENDERGRASS. There was a meeting—shortly after the letter was received——

Senator KENNEDY. Which letter, now?

Mr. PENDERGRASS. [continuing]. The letter requesting the information was received, the manager of employee relations of the plant called a meeting. A number of people attended. I and the medical director both attended that meeting. It was an informational meeting to make all of us aware of the request.

The decision was made by the Labor Relations Department to deny the request. As the proceedings started, three managers from my department gave testimony at the first NLRB hearing about what it would take—from their groups—what it would take to provide the information requested.

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Senator KENNEDY. Did you make any recommendation to the Labor Relations Department in 3M on this issue?

Mr. PENDERGRASS. No, sir.

Senator KENNEDY. Did you agree at the time with 3M's position; do you know?

Mr. PENDERGRASS. I do not know that there was ever any point of agreeing or disagreeing. We were requested to provide the information regarding how much it would take to provide it.

As I recall, Senator, we were not questioned as to whether we should or should not provide the basic information that was requested.

Senator KENNEDY. Well, somewhere during that discussion as the principal health officer for that company, your viewpoint must have been sought on this request. I was just trying to find out what it was at that time, if you remember.

Mr. PENDERGRASS. I do not recall that I was requested to give an opinion. My belief at that time and now and before that, was that the better informed the workers were, they safer they are.

Senator KENNEDY. Well, do you remember ever suggesting that it was not a good idea, then?

Mr. PENDERGRASS. That it was not a good idea for workers to be informed—no, sir.

Senator KENNEDY. No, no. Did you ever feel that the position of the company in denying this information was inappropriate in terms of health?

Mr. PENDERGRASS. No.

Senator KENNEDY. So you do not remember whether you supported the position of the company in terms of not making that information available, or whether you expressed opposition to the company for that?

Mr. PENDERGRASS. I did neither.

Senator KENNEDY. And you were the principal health official?

Mr. PENDERGRASS. I was associate director of the medical department, yes.

Senator KENNEDY. And your testimony is that you think that this is extremely important for the workers?

Mr. PENDERGRASS. I think it is. I think knowledge of conditions of the workplace is extremely important for workers.

Senator KENNEDY. When you were being considered for the nomination, did anyone at the Department of Labor ask you about 3M's position and whether you were involved, or agreed with it?

Mr. PENDERGRASS. I am sorry, I do not quite understand.

Senator KENNEDY. When you were being considered for this nomination here this morning, did anyone at the Department of Labor ask you about 3M's position and whether you were involved or agreed with it?

Mr. PENDERGRASS. It has been discussed, yes; as we have just now.

Senator KENNEDY. Well, can you tell me a little bit more about that discussion? Can you tell me whom you had the discussion with, first of all?

Mr. PENDERGRASS. I had the discussion with, first of all, the congressional liaison people. I had some discussion with the under sec-

retary—considerable discussion, just as you are now, as to what my role was——

Senator KENNEDY. Who else? Anyone else?

Mr. PENDERGRASS. I do not know that there was anyone—I do not believe I have discussed this with Secretary Brock.

Senator KENNEDY. And what did they ask you, and what did you tell them?

Mr. PENDERGRASS. Pretty much exactly the same questions that you have asked me, and I have given them the same answers.

Senator KENNEDY. And that response, as I understand it now from this exchange, is that you think that the right to know is extremely important for all the workers, and that to the best of your memory, you made no recommendation, either in support or opposition, to 3M's position in denying that information to the union, even after it had been overruled, that position had been overruled with the NLRB and with the national NLRB and with the court of appeals?

Mr. PENDERGRASS. Yes, sir.

Senator KENNEDY. I understand the 3M Company had an interest in the lead and cotton dust standards because the standards affect the use of 3M disposable respirators; is that correct?

Mr. PENDERGRASS. That is right.

Senator KENNEDY. And I understand the 3M Company sued OSHA in connection with both of these standards; is that correct?

Mr. PENDERGRASS. They sued with the lead standard and have sued on the cotton dust standard, yes.

Senator KENNEDY. Did 3M succeed in getting the lead standard changed so that its disposable respirator could be fit-tested in a way favorable to 3M?

Mr. PENDERGRASS. The lead standard was changed to permit the use of one of the types of respirators that 3M manufactures for use against lead, yes.

Senator KENNEDY. Well, when they altered that test, did 3M feel that that was a favorable decision or an unfavorable decision?

Mr. PENDERGRASS. I think it was interpreted as a favorable decision.

Senator KENNEDY. Were you aware of a telegram that was sent by 3M officials to 3M salesmen saying that OSHA had verbally agreed to drop the method of fit-testing that 3M objected to, and that the 3M lawsuit against OSHA would be dropped?

Mr. PENDERGRASS. I have seen that telegram, yes, sir.

Senator KENNEDY. In the case of the cotton dust standard, it is my understanding that 3M wanted a protection factor of 10 times the permissible exposure level instead of 5 times those levels, as proposed by OSHA; is that correct?

Mr. PENDERGRASS. That is correct.

Senator KENNEDY. And I understand that 3M did not, in this case, get what they wanted and sued OSHA early this year; is that correct?

Mr. PENDERGRASS. That is correct.

Senator KENNEDY. In any of these legal actions taken by 3M when you were head of the Health Department, was your view asked for, to the best of your recollection?

Mr. PENDERGRASS. No, it was not.

Senator KENNEDY. Is that kind of strange to you that the company is making these decisions affecting the health and well-being of the workers in those plants, and you are the principal health officer, and they are not asking your recommendation?

Mr. PENDERGRASS. No, sir; I do not think it is unusual. My role was that of an advisor. However, the decision to question the standard was one which that product division would make the same as any other product division would make with regard to a standard.

Obviously, the people in the division felt then and continue to feel that their product is adequate, and should be permitted to be used in the situation with lead, as well as cotton dust.

Senator KENNEDY. Well, certainly, the ultimate decision would be made by the legal division, I expect, but I would think that as it is a health-related matter, that they would elicit your viewpoint.

Mr. PENDERGRASS. The Occupational Health and Safety Products Division has a large research staff, which includes many health and safety specialists.

Senator KENNEDY. And what was your relationship with them?

Mr. PENDERGRASS. In 1978, when the lead standard was published and when that action was taken, I was the associate director of the medical department and advisor to that division, the same as all the other divisions of the company.

Senator KENNEDY. Well, let us talk a little bit about the lead standard. Did you have—you have made some reference to it now—did you have any involvement in 3M's efforts to change the lead standard?

Mr. PENDERGRASS. No.

Senator KENNEDY. Do you know Mr. Thorne Auchter?

Mr. PENDERGRASS. Yes, sir.

Senator KENNEDY. Did you meet with him when he visited the 3M plant for 3 days in October 1981?

Mr. PENDERGRASS. No, sir.

Senator KENNEDY. You never met him during that 3-day visit that he was at the plant?

Mr. PENDERGRASS. No, not during that time. I have met him on a number of occasions, but not at that time.

Senator KENNEDY. In October 1981, did you ever have occasion to meet him, to the best of your recollection?

Mr. PENDERGRASS. No.

Senator KENNEDY. Did you have any conversation or communication with anyone at OSHA concerning the lead standard?

Mr. PENDERGRASS. No, sir.

Senator KENNEDY. Did you participate in any way in the cotton dust standard?

Mr. PENDERGRASS. I have mentioned the letter I have written to one of the scientists in OSHA regarding the proposed cotton dust standard

Senator KENNEDY. Is that a letter to Dr. Bien?

Mr. PENDERGRASS. Yes.

Senator KENNEDY. And why did you write him on September 16, I guess, 1983?

Mr. PENDERGRASS. At the time the proposed cotton dust standard was published, it was a surprise to the people in the Occupational Health and Safety Products Division that the definition of respira-

tors had been changed so that one of the 3M products would have a protection factor of 5 instead of similar respirators who have been certified by NIOSH by the same standard and schedule were granted a protection factor of 10.

Mr. Bien is an industrial hygienist, as I am. We both have some recognized competence in the field, and I was requested by the technical service manager to write Mr. Bien, thinking that perhaps, being in the same profession, that I might be able to convince him that his decision was wrong.

Senator KENNEDY. Is this the only time that you ever had any contact with him?

Mr. PENDERGRASS. The only contact with Mr. Bien?

Senator KENNEDY. Yes.

Mr. PENDERGRASS. Oh, we have met before, but that is the only official contact with him

Senator KENNEDY. You have never had any other contact?

Mr. PENDERGRASS. There was a telephone conversation prior to the letter.

Senator KENNEDY. When was that?

Mr. PENDERGRASS. A few days before the letter was written.

Senator KENNEDY. What was that about?

Mr. PENDERGRASS. About the same thing that the letter is; the letter is a confirmation of that conversation.

Senator KENNEDY. That is at the request of whom?

Mr. PENDERGRASS. It was—I am not sure——

Senator KENNEDY. The telephone conversation. Can you give us the background?

Mr. PENDERGRASS. Oh, the same technical service manager.

Senator KENNEDY. And he asked you to make the phone call, did he?

Mr. PENDERGRASS. He asked if I would contact Mr. Bien and see if I could convince him that his decision was improper.

Senator KENNEDY. Do you remember what that conversation—can you tell us to the best of your recollection the contents of that conversation?

Mr. PENDERGRASS. It would have to be in a very general way, Senator, because I did not make anymore notes than the letter indicates. But it was that. It was the discussion of why the decision was made to redefine that particular type of respirator, which then changed the designated protection factor.

Senator KENNEDY. Those are the only two contacts you had with him on this matter?

Mr. PENDERGRASS. On this matter, yes.

Senator KENNEDY. And any contacts you had with him previously were on a nonsubstantive subject matter?

Mr. PENDERGRASS. Well, the sort of contacts that have when they are attending meetings——

Senator KENNEDY. So it was not directed toward any particular——

Mr. PENDERGRASS. No, sir.

Senator KENNEDY. Now, did you think it was proper for you to write a letter at that time?

Mr. PENDERGRASS. Yes, sir.

Senator KENNEDY. This was just 2 days before public hearing which you referred to in the letter; is that right?

Mr. PENDERGRASS. I do not have that letter with me. The proposal had been published when that letter was written.

[Staff handing document to Mr. Pendergrass.]

Senator KENNEDY. But there were public hearings which you referred to in the letter.

[Mr. Pendergrass perusing document.]

Mr. PENDERGRASS. The public hearings have not been the hearing for the proposal, that resulted in the proposal. I do not——

Senator KENNEDY. Didn't the public hearings start 2 days after this?

Mr. PENDERGRASS. I do not recall; I do not know.

Senator KENNEDY. So you were not aware—the person that asked you to make the call did not ever tell you that there were going to be any public hearings?

Mr. PENDERGRASS. Well, there had been public hearings on the cotton dust standard, or there would not have been a proposal.

Senator KENNEDY. But when—who was this gentleman that asked you to make the call?

Mr. PENDERGRASS. The manager of technical service.

Senator KENNEDY. What is his name?

Mr. PENDERGRASS. Ken Shields.

Senator KENNEDY. Ken Shields.

Mr. PENDERGRASS. Yes.

Senator KENNEDY. Well, when Mr. Shields asked you to make the call to Mr. Bien, did he indicate there was any timeframe when that call ought to be made?

Mr. PENDERGRASS. No, I do not recall that there was.

Senator KENNEDY. So he just said sometime make the call, or contact him; is that right?

Mr. PENDERGRASS. Yes.

Senator KENNEDY. He did not indicate to you any timeframe or any sense of urgency?

Mr. PENDERGRASS. I do not recall that there was, Senator.

Senator KENNEDY. He did not mention to you that there were going to be followup public hearings and he wanted you to contact this gentleman so that the position of the company, or the information that you had, that you knew, that might have some impact on his decision, which would have an impact on the company, would be important?

Mr. PENDERGRASS. Well, obviously, it was the desire that this would have an impact. I do not recall any urgency being expressed.

Senator KENNEDY. Well, don't the rules provide that if you want to express your views at this stage of the proceeding, your views should have been presented at a public hearing?

Mr. PENDERGRASS. The views can be presented at the public hearing, or they can be presented in writing.

Senator KENNEDY. Well, writing at the public hearing.

Mr. PENDERGRASS. I beg your pardon?

Senator KENNEDY. Writing at a public hearing.

Mr. PENDERGRASS. That is a procedure, yes, sir.

I do not recall that this was related to a public hearing that was to follow. I just do not remember that at all.

Senator KENNEDY. Well, it was related to a subject matter that was going to be considered in a public hearing—the cotton dust standard. And there is a process by which these decisions are made, and it is the reason that they have the hearings. Those matters are allegedly supposed to be public information and communications are supposed to be a matter of public record. That is the process and procedure. And you made the phone call, and then you wrote a letter relating to this subject matter, and that letter was not entered in the public docket, was it?

Mr. PENDERGRASS. I do not know whether it was or not, Senator. There would be no reason for it not being included, if—it is obviously a part of the record.

Senator KENNEDY. But after, when they had the hearing, you never asked that the letter be there, or sent someone down there to make sure that a copy of the letter would be made a matter of public record?

Mr. PENDERGRASS. I did not, no.

Senator KENNEDY. Were you asked by the Labor Department officials during your consideration, "What are you going to do if you are approved? Are you going to request when people call you about these matters in terms of the standards—what tests are you using?" We have got a procedure by which we consider these various matters, and you know, there are some pretty strict rules about ex parte contacts and the rest.

How do you view all of that?

Mr. PENDERGRASS. Any proceedings of the Department, of the Agency, will follow the rules that exist; we will scrupulously follow those, yes.

Senator KENNEDY. Were you asked by the Labor Department officials during your consideration for the nomination whether you had been involved in any way with the cotton dust standard?

Mr. PENDERGRASS. Yes.

Senator KENNEDY. And what did you tell them?

Mr. PENDERGRASS. Other than this letter, I have not been.

Senator KENNEDY. And was the Labor Department aware of this letter prior to your nomination?

Mr. PENDERGRASS. Yes—nomination—I do not know. They are aware of it. I am not sure exactly of when.

Senator KENNEDY. Well, they are aware of it now.

Mr. PENDERGRASS. And they have been aware of it.

Senator KENNEDY. I would like if I could, Mr. Chairman, to include the letter in the record.

Senator NICKLES. We will be happy to include it.

[The information referred to follows:]

Occupational Health and
Safety Products Division/3M

3M Center
St. Paul, Minnesota 55144
612/733 1110

3M

September 16, 1983

Ching-Tsen Bien, C.I.H.
Office of Technical Support
DOL/OSHA
200 Constitution Avenue N.W.
Washington, D.C. 20210

Dear Ching:

The opportunity to discuss the respirator section of the proposed revision of the Cotton Dust Standard is greatly appreciated. As suggested, this letter is to summarize our (3M OH&SP) concern for a small but highly significant change in how respiratory protection is to be regulated.

To assure that we both understand how terminology will be used in my letter, I will define my meaning of terms. It is also my belief that these are definitions that have historical significance and generally common usage.

1. Single use Respirator - a specific certification awarded by NIOSH Respirator Testing and Certification Branch to respiratory protective devices. This certification was first issued in 1972 and was granted for respirators that could be used for protection against pneumoconiosis and fibrosis producing dusts, including asbestos.

2. Disposable respirators is a term used to distinguish respiratory protective devices that have been granted NIOSH certification for protection against dusts, mists, fumes or vapors. NIOSH has granted HEPA certification to disposable respirators. Consequently, the term disposable distinguishes respirators that are designed to be discarded in their entireity rather than those designed to dispose of only the filter element.

The change in the respirator section Table I in 1910.1043 (f) (2) (i) in effect alters the use of the dust, fume, mist respirators of the "disposable" design type by a new definition. This ignores that some of these respirators have been certified by NIOSH by the same criteria as replaceable cartridge design respirators that in the same table are given a higher protection factor classification, 10 X PEL for the latter against 5 X PEL for the former.

OSHA has already recognized the effectiveness of these same respirators in a similar respirator selection table in the 1982 lead standard. ANSI Z88.2-1980 "Practices for Respirator Protection Standard" also recognizes the effectiveness of the "disposable" design respirators. No distinction is made between the respirators that have replaceable filters and those designed with non replaceable filters.

Prior to the 1982 lead standard, questions had been raised regarding the ability to face fit respirators that could not insert HEPA filters for those to be used. The saccharin aerosol qualitative fit test has been accepted by OSHA for testing the "disposable" design respirators.

More testimony will be presented at the hearing on this subject. It is our belief that it is unreasonable to arbitrarily change the classification and thereby the protecti factor of one design of respirator that has been tested and certified by NIOSH for a higher classification. Since other respirators with this same NIOSH certification are not included, the proposed change is discrimination.

Your kindness in listening to my previous discussion and your consideration of this letter are appreciated.

Yours truly,

John A. Pendergrass
Occupational Health and Safety Products Division/3M

JAP/jak

cc: Edward J. Baier
Director, Technical Support
DOC/OSHA
200 Constitution Avenue N.W.
Washington, D.C. 20210

Senator NICKLES. Senator Kennedy, I notice Senator Simon has been waiting patiently, and I do not know——

Senator KENNEDY. Surely.

Senator SIMON. Please, go ahead.

Senator KENNEDY. I will just maybe go into one more area, and then Paul can go ahead.

Mr. Pendergrass, the 3M Company manufactures sterilizers which use ethylene oxide. The current standard on ETO published on June 15, 1984, does not include short-term exposure levels. Do you think it should?

Mr. PENDERGRASS. From my experience in working with exposures to ethylene oxide principally in the health care industry, no, I do not think a short-term exposure limit is needed.

Senator KENNEDY. Did the 3M Company oppose the inclusion of a short-term exposure level in the standard?

Mr. PENDERGRASS. I do not know. I have not testified with regard to a short-term exposure limit. I have provided some information——

Senator KENNEDY. Well, their own internal guidelines include such exposure levels, and have since 1982, do they not?

Mr. PENDERGRASS. I——

Senator KENNEDY. Their internal guidelines—I have them up here; we are just trying to find the exact place on that—include a short-term exposure level and have since 1982.

Mr. PENDERGRASS. No, I——

Senator KENNEDY. You did not know that. You were not aware of that?

Mr. PENDERGRASS. I did not—no. Is this from the Medical Products Division?

Senator KENNEDY. This says, "Material Safety Data Sheet".

Mr. PENDERGRASS. Oh, all right.

Senator KENNEDY. On the sheet, it has Ingredients A, B, and C, AB; and then an asterisk at the bottom of the ingredients, "Internal Exposure Level" on this, short term.

"STEL", I guess, is the short term, the reference, to 3M.

3M internal exposure guidelines is one; PPE, large TWA, and 5 parts per million, and then the STEL, the short-term exposure level.

Were you aware of that?

Mr. PENDERGRASS. I should be, but I do not recall it right off, no. That still does not change my opinion that a short-term exposure limit is not necessary.

Senator KENNEDY. Well, I understand there is considerable scientific evidence that ETO is both a carcinogen and a mutagen.

Mr. PENDERGRASS. There is a great deal of scientific evidence regarding the toxicology of ETO, and there are differences of opinion.

Senator KENNEDY. Well, is there difference of opinion that it is a carcinogen?

Mr. PENDERGRASS. I think there is, yes.

Senator KENNEDY. What is the body of scientific weight? Which way would you come down, do you think?

I am trying to find out how serious you think that particular item is in terms of dealing with it.

Mr. PENDERGRASS. I think that the toxicology of ethylene oxide warrants control. I think it warrants control at about one part per million—certainly, this would protect people.

My experience has been primarily in the health care industry of doing surveys in hospitals around ethylene oxide units.

Senator KENNEDY. Well, I also understand that there was virtually unanimous agreement within OSHA, supported by NIOSH, that a short-term exposure level should have been included in the standard, but it was deleted because of objections by OMB.

Are you aware of that?

Mr. PENDERGRASS. I have no more information on it than what you have read there. I know there has been considerable discussion of it.

Senator KENNEDY. Well, this is the principal point that I am getting at, that if you are confirmed as an OSHA Administrator, are you going to make the decisions affecting the health and safety of workers, or are you going to let OMB make them?

Mr. PENDERGRASS. As Assistant Secretary of Labor, that is my responsibility, and I will make those decisions.

Senator KENNEDY. But do you think OMB has any right under the OSHA Act to be making such decisions?

Mr. PENDERGRASS. The OMB has responsibilities as outlined by Congress to review many things. However, I do not believe that OMB—my understanding of it is that their responsibility is not to establish levels.

Senator KENNEDY. What is your sense about cost benefit analyses in setting health and safety standards? Where do you come out on that issue?

Mr. PENDERGRASS. That is a very difficult question that we all struggle with all the time. I think that our first responsibility is to protect the health and safety of workers.

We also have a responsibility to do things in an economically feasible manner.

Senator KENNEDY. Well, the Supreme Court has held that there is no requirement for imposing a cost benefit analysis in establishing health and safety standards, and that is an extremely important principle. There are some people in this society who believe that they should. The Supreme Court made the decision that they should not, and I would like to find out from you whether you are going to follow that holding.

Mr. PENDERGRASS. Well, I have to repeat, Senator, that——

Senator KENNEDY. Well, do you see a distinction in cost benefit relations between health and safety matters and those which are unrelated to health and safety—and if you do, what are they?

Mr. PENDERGRASS. I am not sure that I understand the distinction, Senator——

Senator KENNEDY. Well, there are cost benefit questions that relate to health and safety matters; they are one thing. Do you draw any distinction between that and, say, economic regulation, cost benefit analysis in terms of economic regulation, dealing with the regulation of the CAB?

Mr. PENDERGRASS. I think the responsibility is first the health and safety of the workers. We always have to determine what tech-

niques are used to achieve that goal that are both feasible from all the aspects that we have, including economics.

I would like to add, though, I am firmly convinced, Senator, that a safe and healthful workplace does not cost; it is not a cost. It comes out to be to the benefit of everyone.

Senator KENNEDY. I certainly agree with that, but OMB has—and I am just trying to find out if you draw a distinction about cost benefit relations in building a pipeline and a cost benefit relationship that relates to health and safety.

I find a rather dramatic difference on it, and I do not know whether we are at any difference on this, but I would like to hear. I would hope that you would find a rather dramatic difference on it, as well.

Certainly, the Supreme Court has. It is not a new issue. This is a matter of public policy that we have been discussing on the public agenda over some period of time.

As someone who is going to be dealing with these kinds of issues and is going to be subject to a good deal of pressure, so to speak, or at least people that are trying to persuade you to go this way or that way, I want to know what your own gut tells you.

Senator NICKLES. Senator Kennedy, if you will excuse me, and Mr. Pendergrass as well, I am going to have to step out. I think Senator Hatch will be here shortly, and I know Senator Simon has some questions as well. So I apologize to both of you.

Thank you.

Mr. PENDERGRASS. Thank you, Mr. Chairman.

Senator Kennedy [presiding]. Is there anything you would like to say in reference to that observation?

Mr. PENDERGRASS. I do not know how much——

Senator KENNEDY. I am not interested in trying to get you in trouble on this, but it seems to me to be a pretty obvious question. I am not asking about a specific standard. I am just asking about a viewpoint, and an attitude.

You know, it is very troublesome to me, quite frankly, now to find out that you do not draw some kind of distinction in this area which has been a matter that has been discussed and debated and which has been brought up to the Supreme Court. You are going to be the principal figure in terms of the questions of health and safety, and I certainly want to have someone in there who is going to be pursuing those issues with a vengeance. That is what we are talking about, the safety at the workplace. And when these old chestnuts come out, these old arguments come out about cost benefits, you are going to say, hey, look, with regard to health and safety, the Supreme Court has ruled that way; I would not have taken this job unless I was committed to protecting the health and safety. And those arguments just do not go in this particular area.

No one is asking you to try and draft things that are going to be obviously unreasonable, irrational and nonsensical, but we want to have somebody, I would think, in there who is going to be responsible and strongly committed, who recognizes the difference between cost benefit relationships of pipeline and dams and understands the difference in the cost benefit relationship between the health and safety at the workplace.

Mr. PENDERGRASS. Senator, I do not think that we are at cross-purposes here at all——

Senator KENNEDY. Well, I would like to hear you say it rather than me; when I say these things, that is all I am trying to get some sense about.

Mr. PENDERGRASS. My dedication is to the health and safety of the workers. I am convinced that that not only is good public health policy; I think it is also good economic policy.

Senator KENNEDY. You see—and then I will yield to Senator Simon—after the recommendations went over from OSHA, making these recommendations, OMB effectively struck large amounts of the safety proposals; they just x-ed them out, OMB did, everything related to the STEL—everything. And they are not authorized by the Congress to do it, and that is an inappropriate action. And I do not want to have someone go down there and be willing to just accept that type of action. That is what we are talking about. They have absolutely no right. You are responsible for these things, and I want to be sure, at least as we are doing this consideration, that we are going to have someone down there who is going to do it, and not let OMB do it. They are just doing it on this particular standard, and they have done it with regard to other things that have been related to this committee, quite frankly—on age discrimination and other kinds of things.

Mr. PENDERGRASS. Senator, you used the word that I think is the important one there. The Assistant Secretary of Labor for OSHA has the responsibility; I will expect to exercise that responsibility.

Senator KENNEDY. Senator Simon.

Senator SIMON. If I may follow through on Senator Kennedy's question, I guess what I am looking for is someone with some passion for protecting the rights and the health and the safety of workers.

I just glanced through your publications and everything, and there is no question of your technical competence when you, in response to his question, said that you believe that good health policy can also be good economic policy. But what if economic policy and health policy in a particular case are in conflict?

Let me just give you a very specific case. In 1983, a worker died at the Film Recovery Systems Corporation in Elk Grove Village, of cyanide poisoning. That happened because an inspector could not inspect the plant under this administration's policy of calculating the number of injuries reported in a worksite before there could be a full inspection.

Now, in a precedent-shattering case, the four owners of that plant have been found guilty of murder. In a very real sense, whoever promulgated that regulation, I think, could be found guilty of murder.

Now, I can see where somebody can argue economics, and that really, we ought to have so many injuries reported before we can move in. I guess what I want is somebody who is really committed to protecting the workers of this country. And I guess what I want to elicit from you is a little bit of passion in that direction.

Mr. PENDERGRASS. You bring up a case that brings forth a passion, I think, in many people; it certainly does in me, and I think, my colleagues in health and safety.

It was an inexcusable set of circumstances that would allow people to be exposed to things that would damage their health, such as happened there.

As a personal opinion, I think the owners and managers got what they deserved.

Senator SIMON. What about the people who drew up the regulation that said, "You do not go in unless you get so many injuries reported, for a full inspection"?

Mr. PENDERGRASS. Well, that incident, I think, has prompted some changes in that procedure. I think you can appreciate, Senator Simon, that with the resources that are available to OSHA, it is very important that the compliance officers be sent to places where they can do the most good. Obviously, that was a place where a lot of good could have been done.

In trying to——

Senator KENNEDY. Just on that point, if the Senator would yield, will you let us know, then, where you cannot go because you do not have the resources, and what the health implications will be because of the failure of the budget?

Mr. PENDERGRASS. We will certainly be working with this committee to——

Senator KENNEDY. Well, that is not the question. I am sure you are going to work, and you are going to cooperate, and you are going to do all the rest. That is not the question.

You just ended that you are targeting resources in areas because they apparently have scarce resources. And the public has a right to know what those scarce resources are going to mean in terms of their health and safety.

Are you going to be willing to come on up here and tell Senator Simon and the other members of the committee: "We have got *x* amount of money, so we are going to go into these areas. If we had *y* amount of money, we could go in these areas, too. This is how important it is to do it. These are the kinds of dangers that we are going to face if we do not do it"?

I mean, we have every right to know that. All I want to know is whether you are prepared to do it.

Mr. PENDERGRASS. We will keep you fully informed as to what the agency——

Senator KENNEDY. I will just say now, if you get it, you are going to get asked that question.

Senator SIMON. I guess what we want is more than just to be fully informed. We want somebody who is going to be an advocate.

Mr. PENDERGRASS. I am an advocate for worker health and safety, Senator, yes.

Senator SIMON. OK; then if I may follow through on that, let me just give you a few statistics.

OSHA in fiscal year 1980, manufacturing, 27,224 inspections; fiscal year 1985, 16,283.

Serious violations reported, 44,695 in fiscal year 1980; 32,757 in fiscal year 1985.

Number of willful violations found, 1,238 in fiscal year 1980; 281 in fiscal year 1985.

Repeated violations, 3,541 in fiscal year 1980; 2,669, fiscal year 1985.

Total penalties assessed, $25.5 million in fiscal year 1980; $14.9 million in fiscal year 1985.

Do those figures say anything to you?

Mr. PENDERGRASS. Obviously, they say a lot of things. I think we have to look at what are behind the figures. It takes about 10 hours for a compliance officer to conduct a safety inspection; it takes about 30 hours to conduct a health inspection; it takes over 200 hours to conduct the broad coverage inspection such as has been done and is being done at chemical plants throughout the country.

What we have to ask is how have those hours been spent, and as a result, how many inspections have been conducted.

Each one of those is an inspection. One might take 10 hours, one might take over 200 hours.

Senator SIMON. But on balance in fact, we have to say there has been a deterioration in OSHA enforcement. I think that is generally acknowledged. Now, I think we would have to say in the last year, year and a half, it has picked up a little. And I want it to pick up appreciably more. I would like to see us do what we ought to be doing to protect the workers of this country. And I guess I want you to recognize that things are not as they should be. Now, there is no question there is a difference in inspections. But that was true in 1980 as well as 1985. And on balance, somehow, we have had a 40-percent drop in the number of manufacturing inspections; a 27-percent drop in the number of serious violations found; a 77-percent drop in the number of willful violations; a 25-percent drop in the number of repeated violations found, and a 42-percent drop in penalties.

Now, overall, you know, that gives me a message that things are not happening that should be happening. If you would go back to fiscal year 1983 instead of fiscal year 1985, the figures would be even worse.

I guess what I want from you is some kind of a commitment that you are going to get us back on the path, or continue on a path that is an improvement over the downhill we were going on from fiscal year 1980 to fiscal year 1983.

Mr. PENDERGRASS. Senator, as Assistant Secretary of Labor for OSHA, the emphasis will be to provide a safe and healthful workplace. We will use the resources that we have to achieve this in the most effective way that we can.

Senator SIMON. And if you do not have the resources to achieve that, to do the kind of a job that you need to do, are you going to come back here and tell us? That is Senator Kennedy's question.

Mr. PENDERGRASS. Again, I am going to have to come back to what I said earlier, that we will keep you fully informed. And I think we have to recognize, as everyone in the country is, that right now, we are in a period of constraints.

Senator SIMON. Believe me, we recognize that. But there is a difference in priorities. In other words, if we need new furniture, we can get by another year without it. When you are talking about protecting workers in a factory, you cannot get by another year without it.

So I guess I want you to believe firmly and to follow through in making this a priority. That is really my basic message.

Mr. PENDERGRASS. I will have to repeat. I have spent 38 years doing this, Senator. I expect to spend the next 2½ doing it in a little different arena than I have in the past.

Senator SIMON. OK. And with some zeal, recognizing, like those employees at the Film Recovery Systems Corp., you have the fate of a lot of people in your hands, perhaps more than any other official in the Federal Government; you recognize that.

Mr. PENDERGRASS. Yes, sir.

Senator SIMON. I do have some other questions I would like to submit in writing, and I would like your responses before we get to confirmation on the floor. I thank you.

No further questions.

Senator KENNEDY. I have just a couple other things.

If you are confirmed, what will you do if matters of interest in the 3M Company come up?

Mr. PENDERGRASS. There is a lawsuit that has been filed by 3M against OSHA regarding the cotton dust standard. I will recuse myself from anything to do with that.

Senator KENNEDY. Well, do you intend to recuse yourself from all of the areas, not just the lawsuit?

Mr. PENDERGRASS. Senator, I think that that would put me in a position of not being able to do a very good job. I have no financial relationship with the company. I retired over a week ago. I will have a pension that will be paid. I will have no financial interest, no conflict of interest in that way.

As you know, 3M Company is one that is in lots of businesses, and a lot of different businesses. And to say that I would recuse myself from anything that might have a bearing on 3M would, I think, be terribly limiting.

Senator KENNEDY. I am not interested in what that criteria might be, but do you want to work that out with counsel over there at the Labor Department and maybe submit some kind of memo?

Mr. PENDERGRASS. I have discussed it with them, Senator.

Senator KENNEDY. Could you give us something in writing on it? I think we ought to have some understanding of what is going to be your guideline in terms of your judgments on it.

Mr. PENDERGRASS. Yes.

Senator KENNEDY. I think you are absolutely right in terms of recognizing the scope of 3M, obviously, and its implications in a wide range of different areas, and I think all of us understand that. And if you are going to do this job that you are confirmed for, you ought to do it. But I do think it would be valuable, both in terms of your own protection, and I think, the confidence of people if we have that worked out in some form or some shape, and I would like to see if you can make that request over there. And I will speak to the chairman here, because he obviously, I imagine, will have some interest in it. But I would suggest that you have someone's thinking about that now over there for us.

If you do recuse yourself, who will be making the decisions?

Mr. PENDERGRASS. The positions in the Agency have not been decided and certainly will not be until I am confirmed.

[Whereupon, Senator Hatch assumed the Chair.]

Senator KENNEDY. I was distracted from your answer.

If I could trouble you again, just on who would make the decisions if you recuse yourself?

Mr. PENDERGRASS. It would be a responsible person in the——

Senator KENNEDY. Well, if you could let us know on that, how they are going to handle it over in the Department, I would appreciate that.

Oh, yes—there is an area of very special interest that I would just like to draw to your attention, and that is the needed health standards.

I understand there are a number of health standards which need either issuance or revision which are not on the agenda. Cadmium, for example, has needed updating for some time. When Mr. Auchter was before the committee in 1981, I asked him when he was going to act on the cadmium standard, and that was 5 years ago, and there is still no action. I would just make reference to the hearing that we had on September 23, 1981.

In the questioning of Mr. Auchter, I asked him about it, and I think it would at least be appropriate to indicate that he gave a sense or urgency about this as well, and time has gone on, and there are a number of others. So I would like to ask, will you look into this, if you are confirmed?

Mr. PENDERGRASS. Yes, Senator.

Senator KENNEDY. And there are a number of others—silica, wood dust, grain dust, chromium—that are not on the agenda, and they seriously need attention, and netrous oxide and grain dust.

Could you look into those, too, and let us know when we might be able to expect action?

Mr. PENDERGRASS. Yes, sir.

Senator KENNEDY. We appreciate your attention to this area, because there has not been all done in that area, with the timing, certainly, that I think some of us might have expected.

Finally, I understand Senator Metzenbaum asked you to go out and look at a migrant labor camp and the poor conditions there before the hearing. Did he ask you to do that?

Mr. PENDERGRASS. In the discussion, he asked if I had ever been to a migrant labor camp. I told him I had not. He suggested it would be something, it would be wise to do. I have not had an opportunity to do that.

Senator KENNEDY. Well, what can I tell Senator Metzenbaum? Can I give him the assurance that you will visit a camp, if confirmed?

Mr. PENDERGRASS. I will certainly make every effort to visit one, Senator.

Senator KENNEDY. Well, let us go a little further than that.

Mr. PENDERGRASS. I will visit a migrant labor camp.

Senator KENNEDY. All right. Well, if you do not, Howard will certainly be talking to you. [Laughter.] I think it is very important and worthwhile. We used to have a migrant subcommittee on this committee, and I had an opportunity to visit a number of them all over, in south Florida, and also down in the Southwest and in California. There is an extraordinary concern about what is being used out in those fields, and the health implications, and there are some rather startling statistics. It is not just these chemicals, but I cer-

tainly think it would be enormously informative, and I would join Howard in making that request.

I want to thank you very much, Mr. Chairman, and thank Mr. Pendergrass.

The CHAIRMAN. Thank you, Senator Kennedy.

Do you have any other questions, Senator Simon?

Senator SIMON. I do have one further question. I was just glancing through the testimony of some witnesses who are yet to be heard from, Dr. Mirer and Margaret Seminario, in which they say, "The right to know about chemical hazards on the job should be implemented as quickly and completely as possible."

Do you have any comments on that?

Mr. PENDERGRASS. Well, you know that the second phase of that law becomes effective the 25th of this month And yes, it will be enforced.

Senator SIMON. And you are going to push vigorously on that front?

Mr. PENDERGRASS. Yes, sir. I think that that is probably one of the most significant things that has come from OSHA in the 15 years that it has existed.

Senator SIMON. OK, thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Simon.

We want to thank you, Mr. Pendergrass. We are really happy to have you nominated for this position. I support you strongly. I am sorry that I could not have been here earlier, but quite frankly, I was out of the city, and I came as soon as I could.

We are grateful to have people like you willing to serve, and we look forward to working with you.

Mr. PENDERGRASS. Thank you, Senator.

Senator KENNEDY. Would the nominee like to introduce his family?

The CHAIRMAN. Yes, I would like that.

Mr. PENDERGRASS. Yes. Not the whole family, but two of them are here. My wife, Dolly, and my son, John, are here. And I have two daughters, one in Chicago and one in Dallas, who could not be here today.

The CHAIRMAN. We are very happy to have your wife and son here as well.

Senator KENNEDY. What are their names, just so we have it in the record?

Mr. PENDERGRASS. Judy and Nancy.

The CHAIRMAN. Well, you have used good names. I do not think you will have any problems with us.

Senator SIMON. Mr. Chairman, since he has a daughter in Chicago, his chances have just increased appreciably of being confirmed.

The CHAIRMAN. That is the way it is around here; you need to know that. [Laughter.]

Mr. PENDERGRASS. I am glad she had the wisdom to be in Chicago.

The CHAIRMAN. Thank you so much. It is good to have you here. We will try and get this through as soon as we can.

Mr. PENDERGRASS. Thank you.

The CHAIRMAN. Our next two witnesses are Mark A. de Bernardo, manager of labor law and special counsel for domestic policy at the U.S. Chamber of Commerce; and Dr. Franklin E. Mirer, the director of the Department of Health and Safety for the United Auto Workers. Dr. Mirer is accompanied by Ms. Margaret Seminario, the associate director of the Department of Occupational Safety and Health and Social Security with the AFL–CIO.

Mr. de Bernardo, we will begin with you. We are going to limit you both to 5 minutes each, if we can, and we would appreciate your summarizing, if you will.

Mr. de Bernardo?

STATEMENT OF MARK A. DE BERNARDO, MANAGER OF LABOR LAW AND SPECIAL COUNSEL FOR DOMESTIC POLICY, U.S. CHAMBER OF COMMERCE, ALEXANDRIA, VA; AND DR. FRANKLIN E. MIRER, DIRECTOR, DEPARTMENT OF HEALTH AND SAFETY, UNITED AUTO WORKERS, DETROIT, MI, ACCOMPANIED BY MARGARET SEMINARIO, ASSOCIATE DIRECTOR, DEPARTMENT OF OCCUPATIONAL SAFETY, HEALTH, AND SOCIAL SECURITY, AFL–CIO, WASHINGTON, DC

Mr. DE BERNARDO. Thank you, Mr. Chairman.

My name is Mark de Bernardo. I am manager of labor law and special counsel for domestic policy for the U.S. Chamber of Commerce.

I serve as committee executive of the chamber's council on Occupational Health and Safety. I also am a member of the American Bar Association's Committee on Occupational Safety and Health Law.

The chamber appreciates this opportunity to appear before this committee and expresses its full and unqualified support for the appointment of John A. Pendergrass to head the Occupational Safety and Health Administration.

A close examination of the experience and professional and academic credentials of Mr. Pendergrass demonstrate that he is a highly qualified individual and a most appropriate appointment as Assistant Secretary.

Mr. Pendergrass' more than 30 years of experience in the occupational safety and health field in responsible, senior positions make him particularly well suited for this appointment.

At this point, for the sake of brevity, I will merely point out that in the chamber's statement, we go into much greater detail as to Mr. Pendergrass' career experience, his professional affiliations, and his academic credentials, and I think it is a most impressive record that he has had in his career, and again, makes him well suited for this position.

The March 1986 issue of Occupational Hazards magazine began its article reporting the nomination of Mr. Pendergrass with the statement, and I quote, "There is a professional taking the helm at OSHA."

The chamber could not agree more.

Not only does Mr. Pendergrass have the leadership, experience, and professionalism necessary for the effective performance of his duties as OSHA Administrator; he has substantial knowledge of

safety and health issues and an appreciation for the complexities of compliance.

Too often in the past, OSHA has lost sight of the realities of the workplace—the need for OSHA standards to be clear, to provide guidance, and to be feasible economically and technologically.

Worker protection can be accomplished best when these realities are recognized. Mr. Pendergrass, based on his extensive experience in a number of positions in a variety of industries, is cognizant of the problems that employers and employees face regarding workplace hazards, the most appropriate means of abatement, and the most effective enforcement practices and procedures. He has the necessary characteristics to be an effective OSHA Administrator—a balance of managerial experience, scientific and technical knowledge, and appreciation for compliance priorities and difficulties.

The chamber is confident that he will take a rational and effective approach to the very real problems that our society faces regarding workplace hazards.

Mr. Pendergrass is uncommonly qualified to understand and direct OSHA in each of its complex dichotomies: Safety and health; enforcement and rulemaking, and the Wahington headquarters and its field offices.

Mr. Pendergrass may be the most qualified and experienced person nominated to head OSHA in its 16-year history.

I would like to comment at this time regarding Mr. Pendergrass' abilities as an administrator, which I do think are significant. It is important, because during previous administrations, those who have held the position of OSHA Administrator have not often had the administrative ability to lead a major Federal regulatory agency.

OSHA of course has 2,300 employees; it has a budget of more than $218 million. I think the extensive managerial experience that Mr. Pendergrass has therefore is one of the most critical qualifications for the position, and one which he has and will serve him well as head of OSHA.

I would also like to comment very briefly regarding politics and the Presidential appointment process. I know that in the past, regrettably, from our standpoint, there have been some opponents of the Reagan administration's policies who have used the confirmation process to criticize administration policies for political advantage. And I think that qualified individuals such as Mr. Pendergrass should not be denied Presidential appointments simply because of opponents' disagreement with the administration's policies.

The chamber sincerely hopes that politicization of the confirmation process and partisan policy disputes will not detract from the real issue, the real issue being is Mr. Pendergrass qualified to be Assistant Secretary of Labor for Occupational Safety and Health.

The President thinks he is; the chamber agrees, and an objective analysis of Mr. Pendergrass' experience and credentials can reach no other conclusion.

In my conclusion, I would like to say that the U.S. Chamber of Commerce strongly supports the appointment of John Pendergrass as Assistant Secretary of Labor for Occupational Safety and Health.

He should be confirmed for two primary reasons: First, he is eminently qualified for the position; second, he is the choice of the President.

The chamber appreciates this opportunity to express its support for this nominee, and respectfully urges this committee and the U.S. Senate to confirm the appointment of John Pendegrass.

The CHAIRMAN. Well, thank you, Mr. de Bernardo.

[The prepared statement of Mr. de Bernardo follows:].

STATEMENT
on
THE CONFIRMATION OF JOHN A. PENDERGRASS
as the
ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH
before the
SENATE COMMITTEE ON LABOR AND HUMAN RESOURCES
for the
U.S. CHAMBER OF COMMERCE
by
Mark A. de Bernardo
May 9, 1986

I. STATEMENT OF INTEREST

I am Mark A. de Bernardo, Manager of Labor Law and Special Counsel for Domestic Policy for the U.S. Chamber of Commerce. I serve as Committee Executive of the Chamber's Council on Occupational health and Safety. I also am a member of the American Bar Association's Committee on Occupational Safety and Health Law.

The Chamber appreciates this opportunity to appear before the Committee and express its full and unqualified support for the appointment of John A. Pendergrass to head the Occupational Safety and Health Administration (OSHA).

The Chamber, on behalf of its more than 180,000 members, has a strong interest in the Occupational Safety and Health Act, its enforcement and administration by OSHA, and the appointees entrusted with the responsibility of administering this critical safety and health law. The Chamber particularly is concerned that the top official of the agency be an individual qualified for this position and able to continue the regulatory policies of the Reagan Administration.

The Chamber respectfully urges this Committee to report favorably Mr. Pendergrass' nomination as Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary or OSHA Administrator).

II. THE QUALIFICATIONS OF MR. PENDERGRASS FOR ASSISTANT SECRETARY OF LABOR FOR OCCUPATIONAL SAFETY AND HEALTH

A close examination of the experience and professional and academic credentials of Mr. Pendergrass demonstrates that he is a highly qualified individual and a most appropriate appointment as Assistant Secretary.

Mr. Pendergrass' more than 30 years of experience in the occupational safety and health field in responsible, senior positions make him particularly well suited for this appointment:

- Career Experience -- Mr. Pendergrass has had a long and highly successful career in occupational health and safety. He has been with the 3M Corporation in industrial hygiene for more than 20 years, most recently as Manager of Hazard Awareness Products. His career experience includes work as a biologist, a clinical laboratory supervisor, a safety engineer, and a certified industrial hygienist. He worked for the Tennessee Valley Authority, the Boeing Company, and the American Cyanamid Company prior to joining 3M. John Pendergrass clearly has a wealth of relevant experience appropriate to his appointment as Assistant Secretary. Furthermore, it is relevant to note that 3M has an outstanding safety and health record and is considered by most experts familiar with its program to be highly responsible in its commitment to and implementation of sound safety and health practices. No doubt the success of 3M is due, in large measure, to the efforts of Mr. Pendergrass.

- Professional Affiliations -- Mr. Pendergrass served as President of the American Industrial Hygiene Association in 1974-75 and is a director of the American Board of Industrial Hygiene and the American Academy of Industrial Hygiene. He obviously is active in professional organizations and respected by his colleagues in the occupational safety and health field.

- Academic Credentials -- The Administration's nominee for OSHA Administrator holds a bachelor's degree in biology and chemistry from the University of Alabama and a master's degree in industrial hygiene from the University of Michigan -- an academic background which, no doubt, will serve him well in the performance of his duties at OSHA.

The March 1986 issue of Occupational Hazards magazine began its article reporting the nomination of Mr. Pendergrass with the statement: "There's a professional taking the helm at OSHA."

The Chamber could not agree more.

III. MR. PENDERGRASS' ABILITIES AS A HEALTH AND SAFETY PROFESSIONAL

Not only does Mr. Pendergrass have the leadership, experience, and professionalism necessary for the effective performance of his duties as OSHA Administrator, he has substantial knowledge of safety and health issues and an appreciation for the complexities of compliance.

Too often in the past OSHA has lost sight of the realities of the workplace — the need for OSHA standards to be clear, to provide guidance, and to be feasible economically and technologically. Worker protection can be accomplished best when these realities are recognized. The Chamber is confident that Mr. Pendergrass, based on his extensive experience in a number of positions in a variety of industries, is cognizant of the problems that employers and employees face regarding workplace hazards, the most appropriate means of abatement, and the most effective enforcement practices and procedures.

Mr. Pendergrass' career has been devoted to worker protection. Secretary of Labor William E. Brock underscored this dedication when he called Mr. Pendergrass' nomination "a major step toward improving workplace safety and health protection for American workers."

Mr. Pendergrass has the necessary characteristics to be an effective OSHA Administrator -- a balance of managerial experience, scientific and technical knowledge, and appreciation for compliance priorities and difficulties. The Chamber is confident that he will take a rational and effective approach to the very real problems that our society faces regarding workplace hazards. Mr. Pendergrass is uncommonly qualified to understand and direct OSHA in each of its complex dichotomies: safety and health, enforcement and rulemaking, and the Washington headquarters and its field offices.

Mr. Pendergrass may be the most qualified and experienced person nominated to head OSHA in its 16-year history.

IV. MR. PENDERGRASS' ABILITIES AS AN ADMINISTRATOR

During previous administrations, those who have held the position of OSHA Administrator have often lacked the administrative ability to lead a major federal regulatory agency. Extensive managerial experience is, therefore, one of the most critical qualifications for this position. Mr. Pendergrass has this qualification.

This managerial experience will be extremely helpful to him in his responsibilities overseeing an agency with a work force of nearly 2,300 persons and a budget of more than $218 million. The OSHA Assistant Secretary position requires leadership — leadership that Mr. Pendergrass can provide. This is particularly important to the business community because of the substantial reforms that have been achieved at OSHA in recent years, reforms that the Chamber supports.

V. POLITICS AND THE PRESIDENTIAL APPOINTMENT PROCESS

It is regrettable that in the past some opponents of the Reagan Administration's policies have used the confirmation process and these hearings as a forum to criticize Administration policies and for political advantage.

Qualified individuals, such as Mr. Pendergrass, should not be denied Presidential appointments simply because of opponents' disagreement with Administration policies.

The Chamber sincerely hopes that politicization of the confirmation process and partisan policy disputes will not detract from the real issue: is Mr. Pendergrass qualified to be Assistant Secretary of Labor for Occupational Safety and Health? The President thinks he is; the Chamber agrees; and any objective analysis of Mr. Pendergrass' experience and credentials can reach no other conclusion.

The Chamber also wishes to take this opportunity to praise the important and appropriate changes that have been implemented at OSHA during the Reagan Administration under the leadership of previous Assistant Secretaries Thorne G. Auchter and Robert A. Rowland and Acting Assistant Secretary Patrick R. Tyson.

VI. CONCLUSION

The U.S. Chamber of Commerce strongly supports the appointment of John A. Pendergrass for Assistant Secretary of Labor for Occuational Safety and Health. He should be confirmed for two primary reasons: (1) he is eminently qualified for the position; (2) he is the choice of the President.

The Chamber appreciates this opportunity to express its support for this nominee and respectfully urges the Committee and the U.S. Senate to confirm the appointment of John A. Pendergrass.

The CHAIRMAN. Dr. Mirer, we will hear from you at this time. Welcome to the committee, both of you.

Dr. MIRER. Thank you very much.

I am Dr. Franklin E. Mirer, director of the Health and Safety Department, United Auto Workers Union in Detroit. I am accompanied today by Ms. Margaret Seminario, of the AFL–CIO. We are both industrial hygienists by training.

Since policies and programs, not personalities, are the most important criteria for evaluating the nominated head of OSHA, our testimony today is devoted to bringing to you our views on the key facts of the OSHA operation in the last 5 years and the most important areas for OSHA activity in the next few years.

The starting point for these comments is an account of the conditions in American industry, especially the severe problems of occupational disease caused by chemical and physical exposures on the job.

These diseases are the predictable and preventable results of chemical exposures and physical stresses. The emerging knowledge of this relationship, if combined with intense efforts to abate hazards can lead to better workplaces and a radical reduction in future risks.

Health and safety conditions have improved markedly for UAW members since the passage of the OSHA law in 1979. For example, the injury rates in major UAW-represented companies have dropped by over 80 percent during this period, a dramatic improvement compared to the national experience.

Despite these successes, many serious problems remain, both in the area of safety and the area of health. We believe that progress can be made on all of these fronts.

And, while we have optimism for the future because of past success, there are important negatives. And one of the most important ones which you can deal with here in this committee is the Federal role, which is key to moving this effort forward.

We cannot go on forever in the face of hostility and neglect. At a certain point, these will cause irreversible damage to the enforcement agencies and other institutions upon which workers depend; rebuilding will take years, at the cost of lives and health.

There has already been considerable discussion of the impact of various Reagan administration policies on OSHA enforcement efforts and the bad results which can arise from that. I will not repeat that, except to say that one of our examples, in written testimony, the Pymm Thermometer Co. in Brooklyn, NY, shows the problem with failure to follow up inspections and see that abatement has really occurred after a hazardous condition has been identified—in this case, hazardous mercury exposures.

I also want to emphasize that OSHA's recent record in promulgating new health standards has been dismal. Over the past 5 years, only one new standard has been issued, and that one was ordered by the D.C. Circuit Court of Appeals.

One of the major impediments to standard setting has been the Office of Management and Budget. While the regulatory agencies theoretically still have the final authority to set standards, this authority is increasingly theoretical. Progressively, OMB's involvement in OSHA standard setting has become more pervasive and in-

sidious, and the challenges have been launched not on economic grounds or cost grounds, but on the basis of technical aspects of standards.

If Mr. Pendergrass is to become head of OSHA, he must commit that OSHA, and not OMB, will make final determinations on regulations for worker safety and health.

In recent months we have seen some welcome signs of a change of attitude in the Labor Department. But I must emphasize that these are signs, not final positive evidence.

There has been activity in standard setting, some turn around on enforcement, some moves to provide information for workers about hazards. The question before this committee is whether we are going to take advantage of the very real opportunity we have in front of us to make major improvements in workplace safety and health conditions.

The Government must resume its rightful role of representing the public interest and aiding, directing, and accelerating this process. So the committee has three questions before it: What must be done to get OSHA back on track? Is Mr. Pendergrass the person to do it? And in the next year, how can we tell that OSHA is fulfilling its role?

And very quickly, let me give you some specific areas that we in the labor movement have identified as needing immediate action.

The first is that the right to know about chemical hazards on the job should be implemented as completely and quickly as possible, including the extension of coverage of this standard to the 75 percent of American workers who are not now covered.

Second, health and safety standards have to be brought into the 1980's before the 1980's are over. And I should point out that the number of chemicals for which the consensus, including industry, agrees standards are inadequate now numbers about two dozen.

The situation is just as bad if not worse in the area of safety, where critical standards for fatality prevention have been stalled for years.

Third, exemptions of workplaces from OSHA-scheduled inspections should be abolished. This was the source of, in our view, the film recovery systems tragedy.

Fourth, enforcement policy should be changed to encourage verification that serious hazards are being abated. We need a program which requires reinspections and other means to see that identified health hazards and serious safety violations such as those resulting in fatalities are actually abated.

Fifth, OSHA should expand its funding of worker education programs. These can be especially effective in the current environment of concern for chemicals. And OSHA must create a proper balance between management and worker-oriented programs.

Sixth, the professional competence and scientific authority of OSHA must be restored.

Seventh, all appearances of conflict of interest and industry bias must be eliminated. Otherwise, Agency decisions will have no credibility and carry no authority with the working people OSHA is charged to protect.

And with regard to Mr. Pendergrass, the activities of the 3M Co. do raise concerns about potential conflict of interest. We are still

uncertain of Mr. Pendergrass' involvement in some of these activities. And given the ongoing interest of the 3M Co., we believe it would be appropriate for Mr. Pendergrass to recuse himself from decisionmaking on regulatory and enforcement matters which would directly benefit his former employer.

We ask tbe committee to give serious attention to this matter and to the important issues facing OSHA as it considers whether John R. Pendergrass is the right person to take the extremely difficult and, I think, challenging job of putting the Occupational Safety and Health Administration back on track and moving in a forward direction.

Thank you very much.

The CHAIRMAN. Thank you, Dr. Mirer.

[The prepared statement of Dr. Mirer follows:]

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Joint Testimony of
Dr. Franklin E. Mirer, Director of the Department of Health and Safety,
United Auto Workers International Union, AFL-CIO and
Margaret M. Seminario, Associate Director of the
Department of Occupational Safety, Health and Social Security,
American Federation of Labor and Congress of Industrial Organizations
before the Senate Labor and Human Resources Committee
on the Nomination of John R. Pendergrass for
Assistant Secretary of Labor
for the Occupational Safety and Health Administration

May 9, 1986

I am Dr. Franklin E. Mirer, Director of the Health and Safety Department of the United Auto Workers Union in Detroit. I am accompanied today by Ms. Margaret Seminario, Associate Director of the Department of Occupational Safety, Health and Social Security of the AFL-CIO. My remarks today are made on behalf of the UAW and its more than 1 million members in the United States. They also reflect the views of the AFL-CIO.

We welcome the opportunity to comment on the nomination of John R. Pendergrass as Assistant Secretary of Labor for OSHA. Workplace health and safety is a very important issue to American workers. Opinion polling data show that over half of union members believe they face dangers on the job. Their concern for chemical hazards at work is large and growing. Federal OSHA plays a central role in the control of those hazards at work, and the head of OSHA holds the most influential and visible single health and safety job in the nation.

For this reason, the qualifications and views of any nominee for this job should be given careful scrutiny before his or her nomination is recommended to the Senate. Since policies and programs, not personalities are the most important criteria for evaluating the nominated head of OSHA, our testimony today is devoted to bringing you our views on the key facts about the operation of OSHA in the last 5 years, and the most important needs for OSHA activity in the next few years.

The starting point for these comments is an account of conditions in American Industry, especially the severe problems of occupational disease caused by chemical and physical exposures on the job. The relationship between exposure to the basic material of industry and disease has emerged with great impact in recent years. In one sense it is good news: the toll of cancer, lung disease, nerve, kidney, liver and other disorders, and even most of the bone and joint disease thought to be natural wear and tear, are not inevitable. These diseases are the predictable and preventable results of chemical exposures and physical stresses on the job. This emerging

knowledge, if combined with the intense efforts to abate hazards by workers, unions, employers, chemical and equipment suppliers, and government can lead to better workplaces and radical reduction of future risks.

Health and safety conditions have improved markedly for UAW members since the passage of the OSHA law in 1970 and the negotiation of pattern setting national health and safety contract provisions in 1973. The injury rates in major UAW-represented companies dropped by 80% over this period. Exposures to some known hazardous chemicals governed by standards, such as asbestos, lead, and silica were reduced. Many unsafe and unhealthy conditions were abated. These improvements came from the combination of collective bargaining and the grievance procedure, government standards and enforcement, cooperative programs with management, and upgraded company activities.

Despite these successes, many serious problems remain. In the past two years, injury rates in the auto industry began to creep upward again. The problem of fatal accidents among skilled trades and others in maintenance operations persist. Most important, as the dangers of chemical exposures at work become better known as the result of new research, the gap between the preventive measures in place and the size of task appears wider than ever. This perception deeply affects our members, and gives additional urgency to our response.

We believe that progress can be made on all of these fronts. There has even been some movement in the last five years in the face of the full-blown efforts of the Reagan Administration, its right wing allies, and certain parts of the corporate community to roll back hard won protections, dismantle or weaken the stuctures of NIOSH and OSHA, and block new public health interventions, such as state and local right-to-know laws.

In the past two years we have negotiated major new health and safety rights and programs for our members. These programs include cooperative arrangements, such as joint safety committees, occupational health research programs, the evaluation of new technology and chemicals for hazards before they go into use, and jointly designed and delivered health and safety training for all members.

These successes give us optimism for the future, but there are three important negatives. First, the number of hazards yet to be addressed is large and growing -- new data is accumulating at an increasing rate. Delayed or limited action means lives lost or shortened, and embittered by preventable occupational disease or injury. Second, our positive experience is primarily with large employers, where we have bargaining power and management has expertise, resources and a desire to work together to solve problems. Not all unions have these advantages, and most American workers have no union. Finally, the federal role is key to moving this effort forward. We can't go on forever in the face of Administration hostility: at some point the Administration's hostility and neglect will have caused irreversible damage to the enforcement agencies, education programs, and research institutions related to occupational health and safety. It will then take years to rebuild these structures to be effective again. Those rebuilding years will also bring a cost of lives and health.

In 1981, the Reagan Administration drastically weakened OSHA's enforcement efforts through a series of major policy changes. With these changes, the majority of employers were exempt from routine safety inspections, records checks were substituted for inspections of workplace hazards, violations grouped to limit penalties and follow-up inspections nearly eliminated. A clear message was sent to OSHA field staff to go easy on employers. Employers quickly realized that OSHA was no longer a threat and in some cases reduced health and safety efforts. The results have been serious, and in some instances disastrous.

From 1980 to 1982 OSHA enforcement activity fell off precipitously; citations and penalties fell between 50% and 90%. Some increase in activity has been seen in the last two years, but even as of 1985 enforcement activity was still significantly lower than it was in 1980. Citations for serious citations were lower by 27%, willful violations down by 77% and penalties assessed for violations down by 42%. Earlier claims that decreases in enforcement were improving working conditions were silenced last year when the annual BLS survey showed the biggest ever one year increase in injuries, with increased rates reported for all kinds of injuries, illnesses and fatalities virtually in every industrial sector.

These numbers raise concerns but don't give a full picture of the serious conditions that exist in the workplace which have been ignored by OSHA and the disastrous effects it has had on peoples lives.

Last summer three executives of Film Recovery Systems Inc. were convicted of murder and sentenced to 25 years in jail under the Illinois criminal code for occupational cyanide poisoning of an illegal immigrant worker. This landmark decision, holding employers responsible under state criminal laws for workplace health and safety practices has received much public attention. What has not been widely reported is that 2 months prior to the worker's death, OSHA visited the plant and under Reagan Administration policies, a review was conducted of the employer injury records. Since the employer reported a low injury rate, the OSHA inspector left the premises and never inspected the plant. From conditions later described at the plant, its clear that had a plant walkthrough been conducted, the deadly cyanide exposures would have been easily detected. OSHA did inspect the plant after the worker's death. Two serious violations for failure to provide appropriate respiratory protection and safety equipment were cited, and penalties of $4850 proposed. OSHA later settled the case for $2425.

Problems with OSHA's targeting program and exemption policy are well illustrated by the experience with the Union Carbide Company. OSHA's 1981 "targeting" policy exempted all industries in the manufacturing sector with a lost workday injury rate less than the national average from routine safety inspections. This policy exempted most of the chemical industry including the Union Carbide Company Institute, West Virginia plant even though many of the operations were potentially dangerous. After the accident at the Union Carbide plant in Bhopal, India, OSHA conducted inspections of the U.S. plants that manufactured or used methyl isocyanate, the chemical involved in the Bhopal accident. The MIC operation at the Union Carbide, Institute, West Virginia plant was inspected and plant injury records and practices reviewed. The plant was given a clean bill of health and the public was assured by federal OSHA that a major release of MIC was remote. Four months later a major release of another chemical, aldicarb oxime occured sending 128 people to the hospital.

After this August, 1985 accident OSHA decided to conduct a special emphasis program of the chemical industry. The first inspection results were recently reported for the Union Carbide, Institute, West Virginia plant. Major violations related to inadequacies in process design, and detection methods for leaks of highly toxic chemicals were cited. Over a thousand instances of failing to record injuries and illnesses on the log were found, willful citations issued for 128 of these cases. Total penalties proposed exceeded $1.3 million. This was from a plant previously considered "safe" under OSHA enforcement policies.

Another case involves the Pymm Thermometer Company in Brooklyn, New York. In 1981 the OSHA Manhattan office conducted an inspection of Pymm and citied the company for excessive mercury exposures. For three years OSHA gave the company extensions in time to abate the hazard. No follow-up inspections were ever

conducted to determine if the company had taken any action to reduce exposures. Pymm had done nothing to correct the hazard. The situation was discovered when workers' physicians reported high mercury levels in exposed workers. Tests by the New York City Health Department subsequently found hazardous mercury levels in one-third of the workers tested and elevated levels in six children of Pymm workers. OSHA has recently conducted another inspection of the Pymm plant and found mercury exposures ten times the permissible limit. Sixteen violations were found and the $30,100 in penalties assessed. The Manhattan area office is under investigation by the Labor Department.

Each of the cases illustrates problems of Reagan Administration enforcement policies. In response to these situations, OSHA has made small changes in some of its enforcement policies and others are under review. However, this action has only come after the fact -- after workers were poisoned or killed from hazards that are well recognized.

The purpose of OSHA is to prevent illnesses and deaths; all of these cases could have been prevented. Fifteen years after the passage of the Occupational Safety and Health Act, American workers should be able to expect more from the agency responsible for their protection on the job.

OSHA's record on new health standards to protect workers from chemicals has been equally dismal. Over the last 5 years only one new standard has been issued, that was for ethylene oxide, and that was ordered by the D. C. Circuit Court of Appeals. All other significant movement in the direction of setting new standards has come only after a union petition, a lawsuit, or sometimes after a court order. For example, OSHA just this week began hearings on a new standard for formaldehyde, a megaton cancer-causing agent, after 5 years of litigation by the UAW and a court order to reconsider an earlier refusal to act. We are still awaiting new standards for asbestos, benzene (final action was promised by 1984) and ethylene

dibromide. Proposals on methylene chloride, 1,3-butadiene, and methylene dianiline have yet to emerge. Expansion of the hazard communication standard to cover non-manufacturing industries ordered last May by the Court of Appeals has not even been proposed. Five years highlighted by deregulatory activity or inactivity has left the agency with much work to do.

One of the major impediments to standard setting has been the Office of Management and Budget. Under President Reagan's Executive Order 12291, OMB is given the responsibility to review draft proposed and final regulations to determine if they are effective. The regulatory agencies theoretically still have final authority and standards are to be set based upon statutory requirements. Unfortunately, this is not the case. Progressively OMB's involvement in OSHA standard setting has become more pervasive and insidious. OMB consistently has challenged OSHA's proposed and final standards and attempted to substitute its judgement for the professional judgement of the agency, usually not on matters of cost or economics but on the basic technical aspects of standards. Recently OMB has challenged the use of chest x-rays for asbestos-exposed workers and has even gone so far as to calculate their own risk assessment for formaldehyde even though the budget office has no expertise in occupational medicine, epidemiology, toxicology or industrial hygiene.

These interventions by OMB generally take place outside of public view, with nothing committed to paper. Recently OSHA has been meeting with OMB informally, before documents are sent over officially for review, to negotiate the standard with the budget office. Decisions are not based upon record evidence as required by law, but rather a determination on what OSHA views it is possible to get past OMB. In our view this practice is patently illegal.

OMB's reach is now extending to OSHA's regulatory agenda and recordkeeping requirements. Under a new executive order OMB is attempting to force OSHA to

take major deregulatory actions on the agency's policy for carcinogens and methods of compliance. OSHA professional staff are convinced existing policies are sound, and indeed no interested party -- industry or labor -- has petitioned for these regulatory changes. Yet valuable OSHA staff time desperately needed for new regulatory activities must be devoted to respond to OMB's ideological demands.

If Mr. Pendergrass is to be the head of OSHA he must commit that OSHA, not OMB, will make final determinations on regulations for worker safety and health; and that he will oppose attempts by OMB to usurp OSHA's legal responsibility and authority.

In recent months we have seen some welcome signs of a change of attitude in the Labor Department. I emphasize signs, not final positive evidence. There has been activity in standard setting, some turnaround on enforcement, some moves to provide information for workers about hazards. The question before this committee is whether we are to have an ongoing organized program to improve conditions, or whether instead we will have a continuing political battle with sporadic victories by one side or the other.

The nation actually has an opportunity to make major improvements in workplace health and safety conditions because of a present set of ideas among workers, the public and some employers. This can possibly be achieved with a reduction of the bitter conflict which has marked this area in the past. Government, principally the federal government, and principally OSHA, can assume its rightful role of representing the public interest by aiding, directing and accelerating this process, or it can obstruct, confuse and perhaps ultimately derail the effort.

This committee should consider three questions: What must be done to get OSHA back on track? Is John R. Pendergrass the person to do it? In the next year, how can we tell if OSHA is fulfilling its role?

This brings me to the specific areas which we in the labor movement have identified as needing immediate action:

1. The right to know about chemical hazards on the job should be implemented as completely and quickly as possible. This basic self-help standard was won from OSHA only after a 7-year national grassroots campaign involving a labor-environmental-public health-community coalition. This standard, which provides to manufacturing workers the information they need to win protections against dangerous chemicals, must be fully enforced by OSHA. OSHA must also comply with a Court of Appeals ruling which requires it to extend this standard to the 75% of American workers not now covered.

OSHA should also make an effort to produce or promote high quality, accurate and effective educational materials to ensure that required training programs are effective. The UAW, in conjunction with each of the major auto companies in turn, surveyed available educational materials on workplace chemicals and decided that we needed to develop our own materials and train a whole force of in-plant discussion leaders in order to conduct effective training. This program development is paid for from our joint fund and managed by our joint structure. Few employers have adequate resources available to them to conduct required training and most would welcome OSHA's efforts to develop such materials.

2. Health and safety standards have to be brought into the 1980's before the 1980's are over. Evidence of new dangers of exposures to about two dozen common industrial chemicals, some used in megaton amounts, has accumulated in recent years. For many of these a consensus exists, including industry representatives, that bad effects can occur at levels permitted by OSHA standards. Stricter standards are needed, OSHA could demonstrate a new commitment to modernize by completing the work it began after union petitions and court suits on a few standards such as

asbestos and several other substances. However, there needs to be a program to control a large number of other chemicals for which evidence has accumulated. The situation is just as bad in the area of safety, where critical standards for fatality prevention, including power lockout, confined space entry and grain elevators have been stalled for years. The new head of OSHA must devise a plan to get this moving again, and confront and overcome the obstacles rather than accept them as inevitable. If OSHA is to make any progress, the interference of OMB in the standard setting process must be controlled. A commitment must be made that OSHA, not OMB, wiil make final determinations on standards based on record evidence, not OMB demands.

3. Exemptions of workplaces from OSHA scheduled inspections should be abolished. In particular, the exemption of specific workplaces based on employer recorded injury statistics should be immediately eliminated. This records review exemption wastes the inspectors' time reviewing paper instead of viewing the workplace, it encourages employers to distort their injury records and it doesn't do anything for workers. The tragedy at Film Recovey Systems illustrates the need to revoke these exemptions.

4. Enforcement policy should be changed to encourage verification that serious hazards are being abated. The drastic reduction in penalties and higher gravity citations under the Reagan Administration reflected the general attitude of OSHA leadership as well as specific written policies. Employers got the message that the pressure was off. Several recent public enforcement events, notably the Valeron and Union Carbide prosecutions have changed the atmosphere, but these were after the fact punishments rather than an organized program of prevention. We need a program which requires reinspections and other means to see that identified health hazards and serious safety violations such as those resulting in fatalities are actually abated. The tragedy at Pymm thermometer illustrates the need for this change.

5. OSHA should expand its funding of worker education programs. The Reagan Administration said it would emphasize alternatives to enforcement as a means to improve workplace conditions. However, funding for worker education by universities, community service groups and unions, provided under New Direction's grants, was slashed and effective education programs were defunded. OSHA did continue to pay about $25 million a year for free on-site consultation to management, under a program where workers could be denied participation or copies of reports from government-funded consultants. Education programs could be especially effective in the current environment of concern for chemicals, so OSHA should create a proper balance between management and worker-oriented programs.

6. The professional competence and scientific authority of OSHA must be restored. This concern especially applies to OSHA's ability to protect workers against toxic chemicals. In recent years, OSHA has lost much of its technical staff and has been isolated from related agencies such as the National Institute for Occupational Safety and Health, National Toxicology Program and the Environmental Protection Agency. At times, the agency has been openly hostile to these colleagues and also university-based occupational health and safety researchers. Similarly, ties to health and safety specialists in the labor movement were cut. Restored cooperation would assist OSHA in compiling new information needed to update health standards.

7. Finally, all appearances of conflict of interest and industry bias must be eliminated. Otherwise, agency decisions will have no credibility and carry no authority with the working people OSHA is charged to protect. Thorne Auchter was directly involved in vacating citations for a construction company with which he eventually took a job, and Robert Rowland made many decisions on standards for chemicals and oil well drilling despite owning hundreds of thousands of dollars on

stocks in affected energy and chemical companies. This behavior, whether it was technically illegal or not, must stop.

With respect to John R. Pendergrass, the activities of the 3M Company, Mr. Pendergrass' employer for the past 22 years, on matters related to OSHA standards raise some concerns about potential conflict of interest.

The 3M Company has a products division which develops and markets health and safety equipment such as respirators and exposure monitoring devices. Over the years 3M has demonstrated a keen interest in OSHA health standards and has acted aggressively to persuade OSHA to issue standards that would allow the use of 3M's disposable respirators or other equipment under numerous standards including lead, cotton dust, asbestos and formaldehyde.

Respirator provisions of the OSHA lead standard were changed in 1982 in response to action by 3M, that would allow the company's disposable masks to be used. The change came after a lawsuit by 3M and meetings between the 3M Company and OSHA officials. Company correspondence indicated that OSHA agreed to change the standard before going through required standard setting procedures. NIOSH and OSHA professional staff opposed the changes on grounds they weakened protection. The 3M company has recently sued OSHA for refusing to change its cotton dust standard to allow the use of disposable respirators for higher concentrations of cotton dust. 3M has also advocated that the new asbestos standard allow the use of disposable dust masks, and that a revised formaldehyde standard allow 3M's passive monitoring badges to be used. There are serious questions about whether 3M's disposable respirators provide adequate protection against asbestos and whether the monitoring devices are accurate.

We do not know if Mr. Pendergrass has had any personal involvement in these matters or what his views are on these issues. We do know that the 3M Company has been actively involved in OSHA standards issues, and that a number of issues will be

under consideration by the agency which will have a direct bearing on 3M. These include the respiratory protection provisions of health standards like asbestos and monitoring provisions. The Office of Management and Budget is also currently pushing OSHA to change its regulatory policy on methods of compliance to allow respirators to be used in place of engineering controls. The 3M Company could benefit greatly from all of these regulatory actions.

Given this ongoing interest of the 3M Compnay, we believe it may be appropriate for Mr. Pendergrass to recuse himself from decisionmaking on regulatory and enforcement matters that could directly benefit his former employer.

We ask the Committee to give serious attention to this matter and to the important issues facing OSHA as it considers whether John R. Pendergrass is the right person to take on the difficult job of putting the Occupational Safety and Health Administration back on track and moving in a forward direction.

The CHAIRMAN. Senator Simon.

Senator SIMON. Just one question to the last witness.

You heard the nominee testify here before. If you were a Member of the U.S. Senate, would you vote to confirm him?

[Pause.]

Dr. MIRER. I am still not sure. I think that some of the issues regarding Mr. Pendergrass' views on cost benefit analysis and its application to OSHA standards which Senator Kennedy raised, and the exact nature of his position on participation in decisions involving the 3M Co., ought to be explored more fully. And I guess I would take the same privilege as you in requesting and waiting to see the results of those, or the information which you requested to be provided, before confirmation, before I made my final decision.

So I guess the summary is that you requested more information, and I would like to see what that information is before I make my final decision, in the same way that you will.

Senator SIMON. Fine. I thank you.

I have no further questions.

The CHAIRMAN. Thank you, Senator Simon.

We appreciate both of you for participating today, and Ms. Seminario, we are glad to have you here as well.

We appreciate all who have participated in this hearing, and with that, we are going to put Mr. Pendergrass on the May 14 markup. We hope we will report him out at that particular time.

With that, we will recess until further notice.

[Whereupon, at 10:40 a.m., the committee was adjourned.]

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